

shall be subject to the requirements prescribed under § 772.13.

(b) The notice shall include—

(1) The name, address, and telephone number of the person seeking to explore;

(2) The name, address, and telephone number of the person's representative who will be present at, and responsible for, conducting the exploration activities;

(3) A narrative describing the proposed exploration area or a map at a scale of 1:24,000, or greater, showing the proposed area of exploration and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines;

(4) A statement of the period of intended exploration; and

(5) A description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the exploration activities in accordance with the applicable requirements of part 815 of this chapter.

[48 FR 40634, Sept. 8, 1983, as amended at 53 FR 52949, Dec. 29, 1988]

§ 772.12 Permit requirements for exploration that will remove more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations.

(a) *Exploration permit.* Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under subchapter F of this chapter, shall, before conducting the exploration, submit an application and obtain written approval from the regulatory authority in an exploration permit. Such exploration shall be subject to the requirements prescribed under §§ 772.13 and 772.14.

(b) *Application information.* Each application for an exploration permit shall contain, at a minimum, the following information:

(1) The name, address, and telephone number of the applicant.

(2) The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities.

(3) A narrative describing the proposed exploration area.

(4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.

(5) An estimated timetable for conducting and completing each phase of the exploration and reclamation.

(6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount.

(7) A statement of why extraction of more than 250 tons of coal is necessary for exploration.

(8) A description of—

(i) Cultural or historical resources listed on the National Register of Historic Places;

(ii) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places; and

(iii) Known archeological resources located within the proposed exploration area.

(iv) Any other information which the regulatory authority may require regarding known or unknown historic or archeological resources.

(9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) identified within the proposed exploration area.

(10) A description of the measures to be used to comply with the applicable requirements of part 815 of this chapter.

(11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.

(12) A map or maps at a scale of 1:24,000, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface

water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste-material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(14) For any lands listed in § 761.11 of this chapter, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of § 761.11 of this chapter, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of § 761.11 of this chapter.

(c) *Public notice and opportunity to comment.* Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within such time as the regulatory authority may designate, the applicant shall provide public notice of the filing of an administratively complete application with the regulatory authority in a newspaper of general circulation in the county of the proposed exploration area.

(2) The public notice shall state the name and address of the person seeking approval, the filing date of the application, the address of the regulatory authority where written comments on the application may be submitted, the closing date of the comment period, and a description of the area of exploration.

(3) Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within reasonable time limits.

(d) *Decisions on applications for exploration.* (1) The regulatory authority shall act upon an administratively complete application for a coal exploration permit and any written comments within a reasonable period of time. The approval of a coal exploration permit may be based only on a complete and accurate application.

(2) The regulatory authority shall approve a complete and accurate application for a coal exploration permit filed in accordance with this part if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will—

(i) Be conducted in accordance with this part, part 815 of this chapter, and the applicable provisions of the regulatory program;

(ii) Not jeopardize the continued existence of an endangered or threatened species listed pursuant to section 4 of the Endangered Species Act of 1973, 16 U.S.C. 1533, or result in the destruction or adverse modification of critical habitat of those species;

(iii) Not adversely affect any cultural or historical resources listed on the National Register of Historic Places pursuant to the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, unless the proposed exploration has been approved by both the regulatory authority and the agency with jurisdiction over the resources to be affected; and

(iv) With respect to exploration activities on any lands protected under § 761.11 of this chapter, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the regulatory authority must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of § 761.11 of this chapter, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to

come under the protection of § 761.11 of this chapter, to comment on whether the finding is appropriate.

(3) Terms of approval issued by the regulatory authority shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this part, part 815 of this chapter, and the regulatory program.

(e) *Notice and hearing.* (1) The regulatory authority shall notify the applicant, the appropriate local government officials, and other commenters on the application, in writing, of its decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the regulatory authority at a public office in the vicinity of the proposed exploration operations.

(2) Any person having an interest which is or may be adversely affected by a decision of the regulatory authority pursuant to paragraph (e)(1) of this section shall have the opportunity for administrative and judicial review as set forth in part 775 of this chapter.

[48 FR 40634, Sept. 8, 1983, as amended at 52 FR 4262, Feb. 10, 1987; 53 FR 52949, Dec. 29, 1988; 64 FR 70837, Dec. 17, 1999]

§ 772.13 Coal exploration compliance duties.

(a) All coal exploration and reclamation activities that substantially disturb the natural land surface shall be conducted in accordance with the coal exploration requirements of this part, part 815 of this chapter, the regulatory program, and any exploration permit term or condition imposed by the regulatory authority.

(b) Any person who conducts any coal exploration in violation of the provisions of this part, part 815 of this chapter, the regulatory program, or any exploration permit term or condition imposed by the regulatory authority shall be subject to the provisions of section 518 of the Act, subchapter L of this chapter, and the applicable inspection and enforcement provisions of the regulatory program.

§ 772.14 Commercial use or sale.

(a) Except as provided under §§ 772.14(b) and 700.11(a)(5), any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit, shall first obtain a permit to conduct surface coal mining operations for those operations from the regulatory authority under parts 773 through 785 of this chapter.

(b) With the prior written approval of the regulatory authority, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the regulatory authority. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(1) The name of the testing firm and the locations at which the coal will be tested.

(2) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

(i) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

(ii) The amount of coal necessary for the test and why a lesser amount is not sufficient; and

(iii) A description of the specific tests that will be conducted.

(3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to